Supreme Court, U. S.
FILED
NOV 22 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-676

THE HICKOK ELECTRICAL INSTRUMENT COMPANY,
Petitioner,

v.

TEKTRONIX, INC., THE UNITED STATES,
JETRONIC INDUSTRIES, INC.,
and LAVOIE LABORATORIES, INC.,
Respondents.

PETITIONER'S REPLY TO MEMORANDUM OF RESPONDENT UNITED STATES IN OPPOSITION TO PETITIONER'S MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI

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PRESS OF BYRON S. ADAMS, INC., WASHINGTON, D.C.

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The Respondents' memoranda in opposition to the motion of petitioner, the third party defendant, the Hickok Electrical Instrument Company (Hickok), side steps the basic constitutional issue presented in petitioner's motion.

Hickok is a third party defendant in the Court of Claims below not the claimant or the United States as said parties are identified in 28 U.S.C. Sect. 1255

which is the Congressional Statute governing review by the Supreme Court of cases in the Court of Claims, which reads in pertinent part:

> Cases in the Court of Claims may be reviewed by the Supreme Court by the following methods:
>
> (1) By Writ of Certiorari granted on petition of the United States or the claimant; . . .

Hence, said statute clearly provides that only the United States or the claimant (plaintiff below, Tektronix) have the right to request review of this court.

The third party defendant is not mentioned at all as a possible petitioner, and it is because of this apparent exclusion that Hickok, as one of the third party defendants in this case has sought by its motion to permit it as a third party defendant to file a petition for Writ of Certiorari.

The United States is the principal defendant in the case before the Court of Claims, and in 1961 it requested that court to order Hickok to appear pursuant to 41 U.S.C. 114(B).

Hickok has relied upon the United States, as it has been led to believe over the past 17 years that Hickok's rights as well as those of the United States regarding appellant review would be protected by the United States.

Ostensibly for this purpose, the United States requested and obtained from this court two (2) extensions of time to Oct. 23, 1978, in which to file a petition for a Writ of Certiorari.

On Oct. 2, 1978, Hickok and its counsel met in Washington, D.C. with the representative of the solicitor general, and specifically asked if the United States was going to file a petition for Writ of Certiorari. The solicitor general then advised Hickok that a decision had not been reached.

Because the United States did not thereafter timely advise Hickok, and inasmuch as the explicit languange of 28 U.S.C. Sect. 1255 apparently does not provide Hickok the independent right to file its own petition for Writ of Certiorari as a third party defendant, Hickok, at the eleventh hour, prepared its present motion for leave to file a petition for Writ of Certiorari on behalf of itself and the United States which was then filed on Oct. 20, 1978 before the defendant's extension of time expired on Oct. 23, 1978.

To date neither Hickok or its counsel has been advised by the solicitor general of any decision that has been reached by the United States in this matter.

The United States has literally abandoned Hickok at this very late stage of this litigation.

It is submitted that the several extensions of time obtained by the United States, the principal defendant, to file a petition for Writ of Certiorari insures to the benefit of the third party defendant Hickok by reason that the United States specifically requested Hickok to appear in this case under 41 U.S.C. 114(B) as a third party defendant, and the United States and Hickok are both defendants in the court below and have common interests herein including review by this court.

It is further submitted that should 28 U.S.C. Sect. 1255 be interpreted to exclude Hickok because it is a third party defendant, said statute is unconstitutional

and Hickok is being denied its constitutional right to have a full hearing under the principles of due process as protected by the constitution.

It is for these reasons that Hickok repectfully requests this court in the interests of justice to grant its motion to file petition for Writ of Certiorari and petition for writ of certiorari.

Respectfully Submitted,

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